

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES OFFICE OF PROJECT MANAGEMENT & PERMITTING

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December 13, 2010

R. Doug Herzog
Planning & Environmental Coordinator
Bureau of Land Management
Northern Field Office
1150 University Avenue
Fairbanks, AK 99709-3844

RE: Kobuk-Seward Peninsula Resource Management Plan Amendment for the Squirrel River Special Recreation Management Area

Dear Mr. Herzog;

The State of Alaska appreciates the opportunity to offer comments and provide information in support of preparation of the Bureau of Land Management (BLM), Kobuk-Seward Resource Management Plan (RMP) Amendment for the Squirrel River Special Recreation Management Area (SRMA).

The planning effort covers an area with diverse user groups, unique characteristics and concerns, as well as many valuable resources. We recognize that the RMP amendment will address recreation and travel management decisions and will likely result in an associated environmental assessment (EA). We appreciate the BLM's continued commitment to work with the State and others regarding planning on BLM administered lands.

LAND STATUS

The SRMA planning area is affected by both a municipal selection by the Northwest Arctic Borough and state selections. There are lands within the scope of the Squirrel River SRMA plan that are state patented, tentatively approved, and selected lands, including top-filed lands. Significant portions of the planning area have been conveyed to the State, and it is expected that additional areas will be conveyed within the next several years as BLM adjudicates the remainder of state selections. It is in the public interest that the management transition be as seamless as possible when conveyance occurs. The State requests that the planning process avoid making decisions that unnecessarily encumber state selected lands. Even prior to conveyance, BLM management intent for selected parcels should be as consistent as possible with state management intent. Under ANILCA 906(k), the State must concur with authorizations on state-selected lands. State concurrence is based on DNR plans as well as other state policies, regulations and statutes that address selected parcels.

We have attached an updated land status map. Please note that the lower portion of the Squirrel River no longer contains BLM administered lands. Native Corporations own most of this area through patent or interim conveyances and the remainder is State of Alaska tentatively approved. Additional lands along the North Fork Squirrel River are also state tentatively approved. We request BLM acknowledge that these lands will not be retained in BLM ownership and are therefore outside the scope of this planning process.

"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans."

Other State land selections exist at the headwaters of the Squirrel River. BLM should manage these parcels, which were selected in 1993 and again identified by the State as high priority in 2008, consistent with State land use plans. Congress provided management direction regarding state land selection in Section 906(k) of ANILCA, which states, “*the Secretary is authorized to make contracts and grant leases, licenses, permits...*” if “*the State has concurred prior to such action by the Secretary.*”

When these state-selected lands are tentatively approved to the State, they will remain open to public recreation use as per the Department of Natural Resources Northwest Area Plan (NWAP). The NWAP identifies recreation as a co-designated use in some management units and as an allowable use within all the plan designations in the Squirrel River drainage. The NWAP does not affect the generally allowed uses on State land (11 AAC 96.020). Aligning the SRMA management intent for these state-selected parcels to be consistent with the NWAP is clearly in the public interest. As previously mentioned, it will benefit the State, BLM, and the public if the management transition is as seamless as possible when conveyance occurs. Therefore, consistent with 43 CFR 1610.3-2, we expect that this plan will not develop management intent for these lands that deviates from the existing DNR land use plan. The Northwest Area Plan can be found on line at: http://dnr.alaska.gov/mlw/planning/areaplans/northwest_amendment4/

Please note also that much of the Squirrel River in this planning unit has been found to be navigable and as such, the bed of the river belongs to the State of Alaska.

FISH AND WILDLIFE RESOURCES

The Department of Fish and Game serves as the primary agency responsible for management of fish and wildlife on all lands in Alaska regardless of ownership. Clarification of this role and a commitment to cooperate in related matters is addressed in the Master Memorandum of Understanding between the Bureau of Land Management and the Department of Fish and Game. The State requests that the respective roles and a BLM commitment to cooperation in issues that affect each other’s responsibilities be fully recognized in the plan. Specifically, the State requests that the plan and planning process fully recognize the State’s authorities that overlay BLM’s land management responsibilities.

The State is keenly aware that fall hunting in Game Management Unit 23 (GMU 23) has been the subject of user conflict since the early 1980s, primarily between local area residents and non-local hunters transported by commercial transporters. We also understand the BLM faces considerable pressure to act regarding this complex issue. The State supports resolution of this conflict.

The GMU 23 User Conflict Working Group (Working Group) is working toward solutions to issues associated with fall hunting. To date, the Working Group has submitted proposals, recently approved by the Alaska Board of Game, to alter the timing of the Noatak Controlled Use Area and require education on local issues for pilots carrying hunters into GMU 23. The Working Group also recommends expanding the Big Game Commercial Services Board (BGCSB) authorities to regulate transporter numbers and use areas. In addition, independent education and communication programs have shown progress in combating wanton waste. We support these efforts and trust the BLM does as well.

Please note that conceptually, the State prefers and seeks solutions that rely initially on the least restrictive management tools, phasing in additional regulatory solutions only when necessary and when other less restrictive solutions have been proven ineffective. So that BLM planners are better versed on management intent for state lands in and adjacent to the planning area, a brief compilation of the land and resource management tools that state and municipal governments may apply to public activities involving state land, water, and related use of fish and wildlife resources is attached.

OTHER RESOURCE VALUES

We request that the plan also consider the potential for oil and gas exploration in the SRMA. There has been some historical oil and gas exploration in the area; however, exploration has been primarily offshore. The State maintains the right to conduct seismic surveys and conduct further exploration to determine whether or not oil and gas resources are present.

Additionally there are mineral claims and interests that would be impacted by changes to current regulations. The Squirrel River SRMA includes placer mining sites at Central, Baldwin, Klery, and Gold Run creeks. Copper prospects are scattered across the area plan, with the most significant prospects covered by an extensive mining claim block at the Omar, Frost, and Powdermilk prospects on State lands in townships K 024N 010W and K 024N 009W. Access across Federal lands to State lands within the Squirrel River SRMA may also be impacted by amendments to the RMP. We request that BLM consider the need for continued access to State land and resources and ensure that alternatives considered address this need.

Please note that planning and activities undertaken within the SRMA need to comply with Section 106 of the National Historic Preservation Act. Care should be taken when planning travel routes and other ground disturbing activities to address and not disturb cultural resource values. The State Historic Preservation Office is a valuable resource. In the event that archaeological or historical sites are identified through this planning process, the State requests that the State Historic Preservation Officer be notified.

We request that the planning effort consider the effects of proposed actions on water quality and if necessary recommend alternatives or actions designed to protect this valuable resource. For additional information regarding actions to protect water quality please see the attached Recommendations prepared by the Alaska Department of Environmental Conservation.

The State is pleased that BLM will be considering the effects of recreation and travel management decisions on the local and regional economy.

TRANSPORTATION

Transportation corridors are vital to economic growth, commerce and reasonable access to goods and services. The State needs to ensure that adequate transportation corridors are retained in the Squirrel River Special Recreation Management Area. Even though there may be no right-of-way exclusion areas in the planning area, other management actions can preclude positive determinations for rights-of-way and transportation corridors if they are not specifically identified in the resource management plan. Transportation corridors need to be a minimum of 600 feet from the centerline to address alignment, slope development and other engineering requirements. Additional factors related to retaining expansive transportation corridors is the requirement for associated utilities, rest areas, pullouts and other associated transportation facilities.

Historic inter-community travel between Kiana and Noatak, along the Squirrel River, needs to be recognized and a transportation corridor protected. Use of the travel corridor between these communities pre-dates designation of the Squirrel River Special Recreation Management Area. Safe and efficient travel between these communities is vital to local residents.

Back country airstrips and unimproved landing areas (ridgelines, gravel bars and lakes), again pre-dating designation in many cases, should be identified and designated for future use. Backcountry airstrips and landing areas provide access to important areas for recreation, mining, and other public uses. Unimproved landing areas have provided access to large roadless areas for decades and are important components of a developing rural aviation system.

It should also be noted that access to and through the area included in this SRMA is still developing. Recognizing the need for transportation, while addressing potential conflicts with management actions, is vital to meeting public access needs. We request that historical transportation uses and rights of way and transportation corridors be identified in this plan.

The expanding OHV trail system in the SRMA has increased the success rates of hunters in the SRMA. New trails may begin to push into areas that provide important habitat for moose and caribou. However, given the current level of OHV use and conservative management of these resources, the Department of Fish and Game is not concerned about the sustainability of either the caribou or moose populations. The Department of Fish and Game will continue to monitor this use to determine future management needs.

The impact on local transportation costs is another factor to address when considering limits on transporters. The overwhelming majority of hunters (both resident and nonresident) utilize commercial transporters to access the SRMA when hunting caribou, often in conjunction with a regional hub commercial flight. If the number of commercial transporters is substantially limited by BLM, market economics may lead to a significant increase in transportation service costs due to limited competition.

Potential limits on public access within the SRMA may also displace hunting pressure to other portions of GMU 23, which could interfere with the Alaska Department of Fish and Game's ability to manage wildlife populations. It could also lead to displacing conflict elsewhere without improving the overall issue as perceived by the user groups. To address this concern, we request the BLM closely coordinate with the State throughout the planning process. We encourage BLM, as well as other federal land management agencies in the region, to "coordinate their planning and management to the maximum extent possible." (Working Group, January 2009) Moreover, we recommend the BLM provide a draft set of alternatives to local and non-local constituents prior to the formal comment period to better ascertain and address public sentiment.

Additionally, the Bureau of Land Management must develop the plan in accordance with the provision of the Alaska National Interest Lands Conservation Act (ANILCA, P.L. 96-487). Provisions of ANILCA relevant to this planning effort include Sections 811, and 1316(a) among others:

Section 811 of ANILCA, addressing all federal public lands in Alaska, states that:

"the Secretary shall permit on the public lands appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents, subject to reasonable regulation . . . "

In addition, Section 1316(a) allows:

"On all public lands where the taking of fish and wildlife is permitted in accordance with the provisions of this Act or other applicable State and Federal law the Secretary shall permit, subject to reasonable regulation to insure compatibility, the continuance of existing uses, and the future establishment, and use, of temporary campsites, tent platforms, shelters, and other temporary facilities and equipment directly and necessarily related to such activities . . . "

We request that the BLM work with the State to determine traditional routes of access, identify necessary access to state lands and waters, and identify appropriate measures to protect sensitive areas such as wetlands and stream crossings. Additionally we request that BLM consult with the State to ensure that appropriate steps are taken to address the implications of ANILCA on Travel Management.

Coordination with the State and consideration of appropriate ANILCA provisions throughout the planning process will allow planners to coordinate information gathering and documentation, public notices, public hearings, and solicitation of public comment consistent with ANILCA within the context of BLM's overall planning process. Compliance with ANILCA will reduce the potential for appeals and challenges to proposed management actions.

State selected lands should be managed consistent with DNR policies as outlined in the DNR fact sheet "Generally Allowed Uses on State Land" which is attached for your reference.

The State appreciates the opportunity to offer initial scoping comments for the amendment to the Kobuk-Seward Peninsula Resource Management Plan to address the Squirrel River Special Recreation Management Area. We appreciate BLM's efforts to ensure close and consistent coordination throughout the planning process in order to address questions and facilitate resolution of issues as early as possible.

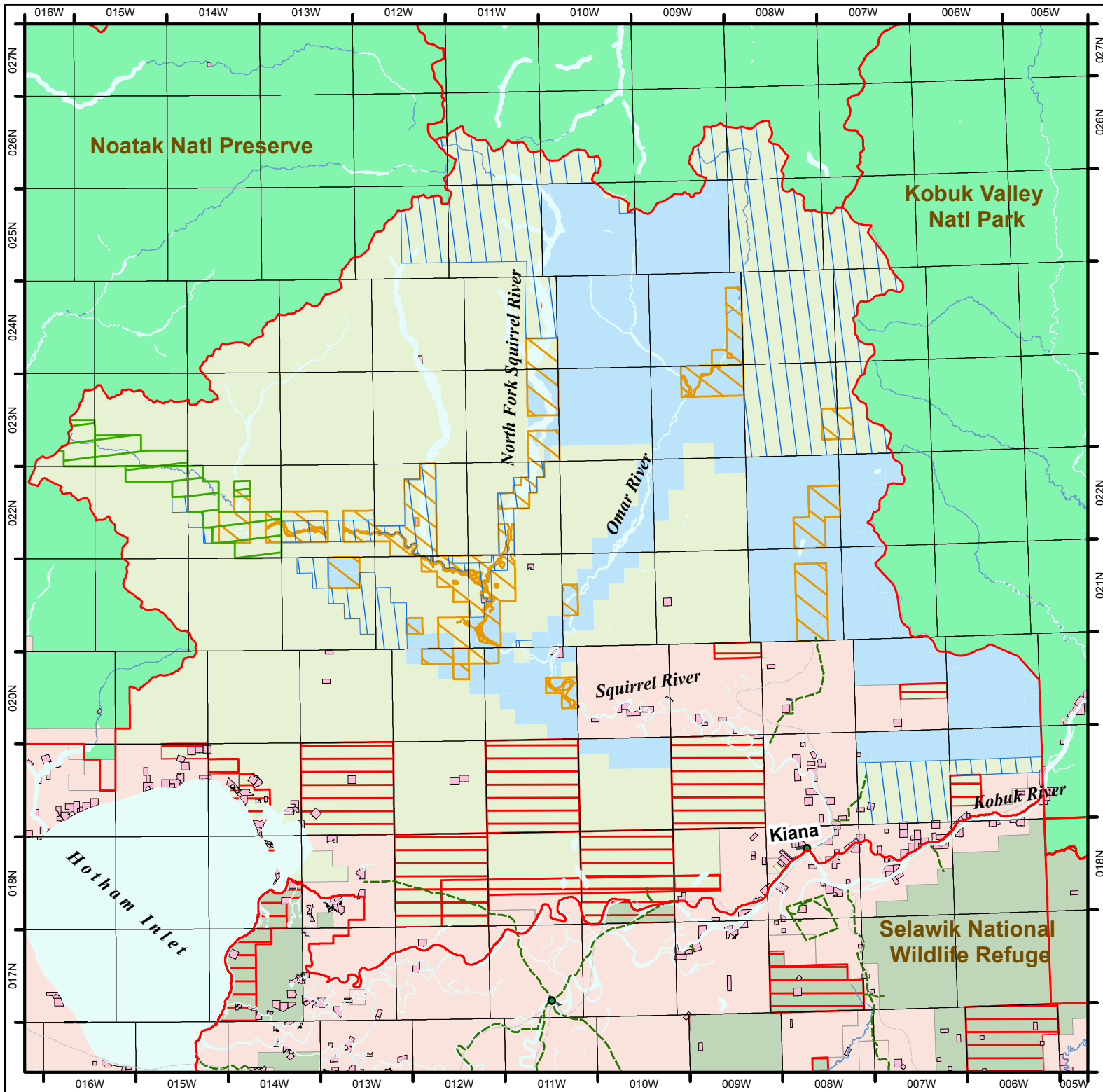
Thank you for the opportunity to comment. Should you have any questions or concerns, please contact me at your earliest convenience.

Sincerely,



Carol Fries
State RMP Project Coordinator



Attachments: ADF&G Land Status Map
Select State Tools for Managing State Land/Water
Generally Allowed Uses on State Land
DEC Recommendations for Land Use Planning









Squirrel River Land Status

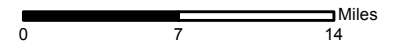
Legend

-  State Selected
-  Native Selected
-  Top Filed

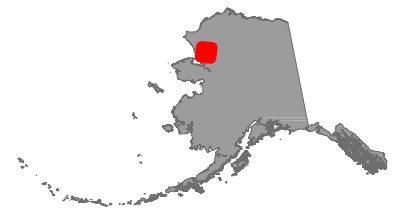
-  Trails
-  17(b) Easement

-  State
-  NPS
-  BLM
-  USFWS

-  Native Allotment
-  Native
-  Private
-  Municipal Entitlement



Map Produced by
State of Alaska
Dept. of Fish & Game Div. of Sport Fish
Date: 10/11/2010



Select State Tools for Managing State Land/Water and Related Public Activities involving Fish and Wildlife Resources

Version # 8 – Updated December 13, 2010

The following is a brief compilation of the land and resource management tools that the state and municipal governments may apply to public activities involving state land, water, and related use of fish and wildlife resources.

State Administrative Authorities

Most state land management authorities for general state-owned lands are found in Titles 38 and 41 of the Alaska Statutes. Most fish and game management authorities are found in Title 16 of the Alaska Statutes. Titles 38 and 41 provide the Alaska Department of Natural Resources (DNR) and Title 16 provides the Alaska Department of Fish and Game (ADF&G) with general administrative authorities provided by the legislature. These administrative management tools include the following.¹

DNR Administrative Authorities

Special Use Land Designations – Under 11 AAC 96.014, DNR may designate state land² “Special Use Land.” The process for developing this designation always includes public notice and involvement and may be part of a DNR planning process under AS 38.04.065. Special Use Land designations that call for public use restrictions must be promulgated as regulations before they become effective. Such designations have been used to establish guidelines for activities such as camping, limiting motorized access, and resource extraction. This designation has also been used to require authorizations for activities where they were not formerly required. Restrictions on public access can be made administratively only if within the limits of AS 38.04.200 (see *Access Restrictions* below).

This designation has been applied to state-owned land and water, providing an administrative and regulatory means for limiting public uses that are “Generally Allowed Uses.”³ For example, the Marmot Island area has restrictions placed on off-road vehicles, boating, and camping, among other uses. Another example is the proposed Kashwitna Special Use Land, which will include restrictions on off-road vehicle use. The State’s Togiak Special Use Land was established as part of a coordinated management strategy with the U. S. Fish and Wildlife Service. The designation established camping limits on state-owned shorelands within and adjacent to the Togiak National Wildlife Refuge.

¹ Some of these management tools are provided in more than one statute and/or regulation, so the citations may not be complete.

² “Land” or “State Land” means all land, including shore, tide and submerged land, or resources belonging to or acquired by the state (AS 38.05.965(20)).

³ “Generally Allowed Uses” are listed under 11 AAC 96.010 which describes which uses on land managed by the DNR Division of Mining, Land and Water do not require a permit or other written authorization.

Land Planning – Several statutes, including AS 38.05.300, require or allow DNR to adopt land use plans to provide for the use and management of state-owned land. DNR uses a system of multiple use classifications, which identify primary uses for any given parcel of land within a planning area. Any given parcel can have up to three primary use classifications. There are numerous classifications established by regulation, including ones for public recreation and wildlife habitat. A map of completed plans can be viewed at the DNR website: <http://www.dnr.state.ak.us/mlw/planning/2005ap.pdf>

Plans have been used to recommend the establishment of Special Use Areas (the Kashwitna Special Use Area was proposed by the Kashwitna Management Plan) and as the basis for establishment of Special Use Areas. For example, the Lake Clark, Kenai Fjords, Resurrection Bay, and Exit Glacier Road Special Use Land designations were adopted concurrently with the Kenai Area Plan.

Development and Management of Parks – AS 38.05.295 gives the Commissioner of the Department of Natural Resources the authority to establish a policy and adopt regulations by which parks and recreation areas can be developed and managed, and it gives the authority to classify public land as parks and recreation areas. This statute works in conjunction with AS 38.05.300, and, therefore, any parks or recreation areas created under this statute are limited to 640 acres. Many of the smaller units of the State Park System located around the state were established by this method. Units over 640 acres can be added to the State Park System only through legislation (see “*Legislative Authorities*” section below).

Cooperative Resource Management Agreements – Under AS 38.05.027, the state can cooperate with federal agencies through mutual agreement. Under these agreements, management objectives and practices are explicitly addressed on specifically identified parcels of land. Memoranda of Understanding have also been used. For instance, the U. S. Fish and Wildlife Service, Alaska Department of Fish and Game, and Alaska Department of Natural Resources signed a memorandum to cooperatively manage the lands and waters of the Chickaloon Flats in the vicinity of Kenai National Wildlife Refuge.

Access Restrictions – The DNR Commissioner can regulate access on state lands, but state law restricts that authority regarding traditional means of access for traditional outdoor activities on state lands and waters. Specifically, 38.04.200 states:

The commissioner may not manage state land, water, or land and water so that a traditional means of access for traditional outdoor activities is restricted for the purpose of protecting aesthetic values of the land, water or land and water or is prohibited unless the restriction or prohibition meets one or more of the following criteria:

- (1) for an area of land and water that encompasses 640 contiguous acres or less;
- (2) temporary in nature and effective cumulatively less than eight months in a three year period;
- (3) for the protection of public safety and public or private property;
- (4) for the development of natural resources and a reasonable alternative for the traditional means of access across the land, water, or land and water for traditional outdoor activities on other land, water, or land and water is available and approved by the commissioner;
- (5) authorized by the legislature.

State land is required to be managed for multiple use. Alaska Statute 38.05.300 states that land and water may not be closed to multiple purpose use if the area involved is more than 640 acres (one square mile), except by act of the legislature or under specific criteria. In addition, while DNR can theoretically administratively create a non-motorized area, as a practical matter, to implement such restrictions through enforcement is limited by available staff and the provisions of Title 38.

ADF&G Administrative Authorities

In conjunction with the regulatory authorities of the Alaska Boards of Fisheries and Game, ADF&G's general mandate is to manage, protect, maintain, improve, and extend the fish, game, and aquatic plant resources of the state in the interest of the economy and general well-being of the state. The combined authorities of the Boards and ADF&G include the establishment of seasons, quotas, bag limits, and harvest levels and regulation of commercial, recreational, guided, subsistence, and personal uses of fish and wildlife through fishing, hunting, trapping and other activities. The ADF&G and Boards of Fisheries and Game are empowered to establish the means and methods employed in the pursuit, capture, transport, and related uses of fish and wildlife. Restrictions on methods and means may include types of access, vessel types, size of motors, and establishment of areas with particular public restrictions such as non-motorized areas for hunting and limiting fishing to catch and release only. Except in emergencies or on legislated lands managed by ADF&G, such restrictions can only be effected through regulations adopted after an extensive public process.

State Legislative Authorities

The power to establish policy for managing public uses of state natural resources resides with the legislature. Although the legislature is not limited regarding what types of designation it can create for any area of state land and water, several designations have consistently been used under Titles 41 and 16, described below.

Alaska Statutes, Title 41

Designations legislated under Title 41 include: State Parks, Recreation Areas, Special Management Areas, Public Use Areas, and Recreational Rivers. For any of these designations, the legislature identifies in statute the public purposes meriting the designation, the lead management agency, specific guidance regarding incompatible activities and allowable uses, the specific powers to adopt and enforce a management plan and regulations, and provides funding. The legislation also can provide specific directions to state agencies regarding joint management with federal agencies.

Management of these areas is usually legislatively assigned to DNR and frequently to the Division of Parks and Outdoor Recreation (State Parks). ADF&G has responsibilities for management of fish and game resources on all lands in the State of Alaska, and this responsibility remains unchanged by these legislative designations. Typically, DNR implements the statutory purposes of the land designation by developing management plans and promulgating regulations in consultation with ADF&G. Given an area's statutory purposes,

these plans and regulations identify incompatible uses, restrict certain uses, and require that guides and other commercial operators obtain special permits to operate in these areas. In state park units established under Title 41, Chapter 21, a person who violates a provision of the statute or regulations is guilty of a misdemeanor, and a citation may be issued to the offender by DNR.

State Park – The statutory purposes for individual parks vary. Examples include “park area” for Denali State Park; water supply, recreational opportunities, scenic value, wildlife, and wilderness for Chugach State Park; and recreational and scenic resources, fish and wildlife habitat, sport and subsistence hunting and fishing, personal use fishing, trapping, and commercial fishing for Afognak Island State Park.

State Recreation Area (SRA) – These are created for “public recreation.” Examples include Captain Cook SRA, Caines Head SRA, and Chena River SRA.

Special Management Area (SMA) – The general intent is to protect and perpetuate fishery and wildlife resources and habitat and to manage recreational uses and development activities. There currently are only two: Kenai River SMA and Business Park Wetlands SMA.

Public Use Area – The statutory purposes vary but may include protection of fish and wildlife habitat, public enjoyment of fish and wildlife and their habitat, public recreation, traditional public uses, personal use woodcutting, fishing, hunting, grazing, trapping, protection of water quality, and scenic resources. Typically the legislature provides very detailed policy guidance (much more so than for a state park), including delineating incompatible uses and specifying uses which may not be restricted. Such policy guidance expresses legislative intent regarding any limitation of public uses. To illustrate how such legislation can be tailored to specific areas, the Nelchina Public Use Area statutes specify that the DNR will obtain the concurrence of ADF&G on land plans for the central caribou calving area.

Recreation River – The statutory purposes for the Susitna Basin Recreation Rivers include protection of fish and wildlife populations and habitat, recreation and economic use, multiple use management of upland activities, and accommodation of access for resource uses. As with Public Use Areas, the legislature provides very detailed guidance on management and compatible activities. Recreation Rivers are not part of the State Park system, and instead are managed primarily by the DNR Division of Mining, Land, and Water. The division has limited field staff and does not have the statutory authority to issue citations for infractions of the regulations.

Alaska Statutes, Title 16

In certain areas where conservation and protection of wildlife and fish is emphasized, the Alaska Legislature under Title 16 created refuges, sanctuaries, and critical habitat areas. As with other types of legislative designation, unit-specific policy guidance regarding allowable uses and incompatible activities is common. Generally, the legislature does not specifically direct ADF&G to restrict fishing or hunting, although there are exceptions, and ADF&G has general statutory authority to issue citations and to arrest violators. DNR also has authorities that vary

between designated areas such as the right to issue leases, rights of way, mining claims, and oil and gas leases.

Title 16 authority for managing fish and wildlife resources is delegated to the Commissioner of Fish and Game, with certain responsibilities assigned to the Board of Fisheries and the Board of Game. This division of powers can seem complex, especially in regard to the “special areas” discussed below. For simplification, the combined authorities are referred to as belonging to ADF&G, recognizing that within the responsibility for conservation and development of the resources, the allocation of resource utilization rests with the Boards.

Sanctuaries – Three such areas have been designated and were created to protect a specific species and associated public uses: walrus at Walrus Island State Game Sanctuary and brown bear at Stan Price and McNeil River State Game Sanctuaries. ADF&G manages the fish and wildlife resources and most land use activities. The DNR manages mineral entry and leasing (except at McNeil River, which is closed to mineral entry and leasing by statute). Hunting and trapping within McNeil River Sanctuary are statutorily prohibited. At Stan Price Sanctuary, ADF&G is legislative directed to manage state owned tidelands compatibly with the U. S. Forest Service’s management of the adjacent uplands.

Refuges – The generic purpose of the state’s refuge designation is to protect and preserve natural habitat and wildlife populations in certain areas of the state, and some refuges have more specific statutory purposes. ADF&G and DNR retain their respective management authorities in refuges. ADF&G manages the fish and wildlife and is responsible for developing a management plan for the refuge in consultation with DNR. An example of site-specific policy guidance is found at the Yakataga State Game Refuge, where timber harvest activities in certain areas are provided for and commercial, recreational, and subsistence fishing and hunting are specifically allowed.

Critical Habitat Areas – The purpose of these areas is to protect and preserve habitat especially crucial to the perpetuation of fish and wildlife and to restrict other uses not compatible with that primary purpose. ADF&G is specifically directed to adopt regulations it considers advisable for conservation and protection purposes governing the taking of fish and game in these areas. Similar to Refuges and Sanctuaries, ADF&G and DNR retain their other respective management authorities. There is sometimes a provision for establishing a citizens advisory committee. At Dude Creek Critical Habitat Area, allowable public uses are listed.

Public Trust Doctrine

The Alaska Constitution and Statutes accepts the authority and responsibility for management of its public trust doctrine resources. The doctrine provides that public trust lands (those below Mean High Tide and within Ordinary High Water boundaries), waters, and living resources are held by the state in trust for the benefit of all of the people and establishes the right of the public to fully utilize these lands, waters, and resources for a wide variety of public uses. The public has a right to use all waterways in Alaska regardless of ownership of the underlying land. State law permits members of the public to touch the bed of a waterway to the extent reasonably necessary to participate in public trust activities, such as boating, hunting, fishing, and trapping. The state manages all waterways for public uses in the state except where specifically limited by

Congressional legislation or Court actions. Attached are most public trust doctrine provisions in Alaska's Constitution and statutes. These lands/waters are managed as general state lands by DNR except where modified by legislative designations or administrative actions.

Designation of waters as special areas – One option for state management of public uses on waters, shorelands, tidelands, and submerged lands may be to adopt legislation utilizing one of the existing designations discussed above or to create a new designation. The legislation would need to identify the purposes for the designation, lead management agency, specific guidance regarding incompatible activities and allowable uses, specific powers the resource agencies have to adopt and enforce a management plan and regulations, and provide funding. The legislation could also provide a specific charge to state agencies regarding joint management with federal agencies, if appropriate.

Enforcement Issues

Adequate law enforcement is a concern statewide. Some resource and land management concerns could be alleviated through enforcement of existing state regulations. Strict enforcement of the existing state regulations could reduce impacts of illegal public use and curb unethical commercial operators. The Alaska Bureau of Wildlife Enforcement's (BWE) responsibilities are spread out statewide over all lands, focused on the subsistence, recreational, and commercial fisheries and hunting, during the periods of seasonally high public use on state lands and waters. Citations may also be issued by the Alaska State Troopers (which includes BWE) for violations under Title 16 (ADF&G Special Areas) and Title 41 (DNR anadromous streams, Forest Practices Act and State Parks). Unfortunately most statutes and regulations that apply to general state lands (areas outside the State Park and ADF&G Special Areas systems) can only be enforced by civil action. While the Alaska State Troopers can issue citations for some nuisance activities such as trespass and littering under the Alaska Criminal Code, many of the nuisance activities that occur on state land are not covered under this code.

Trespass

Trespass concerns generally take one of two forms. The first is trespass onto private uplands, and the second is trespass that occurs on conveyed lands below the ordinary high water mark (shorelands). The first form of trespass often occurs because the private lands are not marked or the parcel has recently been conveyed into private ownership. The second form occurs in cases where shorelands under waterways (which the state asserts are navigable, thus state owned) were conveyed to the private upland owner in error by the Bureau of Land Management. Regardless of ownership, the private landowner is usually unaware that the public is allowed full use of the waterway. The Alaska State Troopers will enforce trespass on private and state lands where sufficient evidence of land ownership is available. Oftentimes, trespass enforcement falls upon appointees of the upland owner to file civil complaints if ownership is in question. Alaska State Troopers will not issue citations for trespass where the land ownership is in dispute.

Trespass could be reduced through educational efforts of land managers, such as maps and brochures that describe land ownership boundaries, the ordinary high water mark, Public Trust Doctrine rights, and the location of public trails, rights-of-way, or easements.

Water quality

All waste not disposed of in accordance with State of Alaska waste water disposal regulations or General Permit issued by the Department of Environmental Conservation, must be hauled to a permitted solid waste facility per 18 AAC 72.020(b). Regulations require a minimum separation of 100 feet between the mean annual high water level of a lake, river, stream, spring, or slough, or the mean higher high water level of coastal waters and the disposal of human waste.

Other Relevant State Regulations

DNR Permits

All commercial recreation businesses that use state uplands, shorelands, tidelands, and fresh water bodies must register. At this time, day use commercial recreation businesses that exclusively operate on salt water, without taking clients ashore on state-owned tidelands or uplands, are not required to register. Air or water taxi services that drop clients off on state tidelands for guided or unguided recreation must register. Air or water taxi services are not required to register the transportation of non-recreation oriented passengers or business services such as delivering supplies to commercial fisherman or transporting people to their remote cabin site. Commercial recreation businesses that occasionally use state land must also register.

Those commercial recreation businesses with a camp or facility, whether occupied or unoccupied, that remains overnight on state land must first obtain a land use permit or lease from DNR. These permits are issued on a non-competitive basis and cost \$500/year. A \$2.00 per overnight client fee is also charged.

Those commercial recreation businesses that already have permits or leases to operate on state land are required to register any commercial recreation day use regardless of whether it is directly related to the permits or leases.

Guide Registration

(1) **Sport Fishing.** Under 5 AAC 75.075, all sport fish guides and sport fish service providers must register annually with the Alaska Department of Fish and Game. In addition, all registered sport fish service providers are required to annually register any powered water crafts and non-powered boats 10 feet or greater in length with the Department of Motor Vehicles. All sport charter vessels used in the guided recreational taking of fish must also be licensed with the Commercial Fishing Entries Commission (CFEC). Under 5 AAC 75.076, all fishing services operating charter vessels in saltwater must obtain and complete a marine logbook for all charter vessels they operate in marine waters.

Fish guiding regulations in various areas of the state, including Cook Inlet, provide specific area and seasonal stipulations that make it illegal for a guide to fish while a client is present or within a guide's control or responsibility, unless the guide is providing assistance to a client with a disability. This prevents the guide from harvesting a bag limit for themselves or more commonly for their clients.

Important Definitions:

"Fishing service" means the indirect provision of assistance for compensation or with the intent to receive compensation, to an angler engaged in sport fishing in the taking or attempt to take fish or shellfish by a

business that employees or contracts with a fishing guide for fishing guide services during any portion of the angler's fishing trip; "fishing service" does not include booking or ancillary services provided by a tour broker or agent to a business that conducts fishing services.

"Fishing guide services" means the direct provision of assistance, for compensation or with the intent to receive compensation, to an angler engaged in sport fishing in the taking or attempting to take fish or shellfish by accompanying or personally directing the angler in fishing activities during any portion of the angler's fishing trip; however, the term does not include services provided by assistants, deckhands, or persons similarly employed who work directly under the supervision of, and on the same vessel as, a fishing guide.

"Charter vessel" means a vessel licensed under AS 16.05.490, used for hire in the sport, personal use, or subsistence taking of fish or shellfish, and not used on the same day for any other commercial fishing purpose; a charter vessel does not include a vessel or skiff without a charter operator.

- (2) **Wildlife Guiding.** Big game guides and transporters are regulated by the Alaska Department of Community and Economic Development under Alaska Statute Title 8. The Big Game Commercial Services Board (commonly referred to as the Guide Board) was created for the purpose of licensing and regulating the activities of big game commercial service providers in the interest of the state's wildlife resources. The Guide Board consists of nine members that make final licensing decisions and takes disciplinary actions against persons who violate licensing laws. Alaska Statute 8, Chapter 54 contains the state's rules for game guides and related definitions can be found as follows: AS 08.54.610 defines a registered guide⁴; AS 08.54.620 Class A assistant guide; 08.54.630 Assistant guide, and 08.54.650 Transporter.

Under AS 08.54.720(17) and (18), big game guides are prohibited from taking big game while accompanying a client or taking the species a client has contracted for while the client is still in the field (excluding defense-of-life-and-property situations):

AS 08.54.720. Unlawful acts.

(a) It is unlawful for a

(17) registered guide, except in the defense of life or property, to knowingly personally take

(A) big game while accompanying a client in the field; or

(B) a species of big game if the registered guide is under contract with a client to provide a guided hunt for that species of big game and the client is in the field;

(18) person who is licensed as a registered guide, a class-A assistant guide, or an assistant guide, except in the defense of life or property, to knowingly personally take big game while a client of the registered guide by whom the person is employed is in the field unless the person is not participating in, supporting, or otherwise assisting in providing big game hunting services to a client of the registered guide by whom the person is employed; or

(19) person who is licensed as a transporter, or who provides transportation services under a transporter license, to knowingly accompany or remain in the field with a big game hunter who is a client of the person except as necessary to perform the specific duties of embarking or disembarking big game hunters, their

⁴ Beginning in 1932, the Alaska Game Commission required nonresident photographers to hire a registered guide to photograph brown, grizzly, or polar bear. The regulation was retained by the State of Alaska until 1967. Through the early 1970s, the definition of guiding was "Guiding as herein used means accompanying, guiding, or assisting another person to take or photograph game with the intent of receiving monetary or material remuneration for such services..."

equipment, or big game animals harvested by hunters; this paragraph does not apply to a person who holds both a transporter license and any class of guide license issued under this chapter.

Alaska Statute 16.05.790 prohibits obstruction or hindrance of lawful hunting, fishing, trapping, or viewing of fish or game.

Alaska Statute 16.05.940(33) defines “take” to mean taking, pursuing, hunting, fishing, trapping, or in any manner disturbing, capturing, or killing or attempting to take, pursue, hunt, fish, trap, or in any manner capture or kill fish or game. The phrase “or in any manner disturbing ...” may theoretically provide authority to cite those who “disturb” wildlife or fish out of season with the same force as someone who kills those critters; this has not been tested in court.

Attracting Wildlife

Feeding of wildlife or leaving garbage that attracts them is prohibited by regulation (5 AAC 92.230) except under an ADF&G permit:

A person may not intentionally feed a moose (except under terms of a permit issued by the department), bear, wolf, coyote, fox, or wolverine, or negligently leave human food, pet food, or garbage in a manner that attracts these animals. However, this prohibition does not apply to use of bait for trapping fur bearers or hunting black bears under 5 AAC 84 – 5 AAC 92.

The guidelines for taking a bear in defense of life and property are set forth in regulation 5 AAC 92.410. Provocation of the animal and negligent storage of food are not justifications for shooting a bear. Brochures and other means are used to advise traveling public to avoid using well-worn bear trails and avoid camping near food sources such as salmon streams or berry patches. The brochure, “Bear Facts,” from the Alaska Department of Fish and Game offices around the state addresses these issues.

Other Government Tools

Boroughs (municipal governments) have authority to adopt planning, zoning, or municipal land use regulations that can address recreational development. Some boroughs have used planning and zoning powers to address certain types of recreational use, such as motorboats on lakes in the Mat-Su Borough, but generally do not restrict recreational uses unless there is a public health or safety issue (such as snowmachines on residential streets). Municipalities can adopt Coastal Management Plans that apply to state, municipal, and private lands; these plans provide general guidance over development activities. The Coastal Management Plans generally do not address recreational use. Boroughs may also own land, most of which is land transferred from the state under the municipal entitlement program.

Public Trust Doctrine
ALASKA CONSTITUTION

Alaska Constitution Article VIII, section 3 states:

Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

Alaska Constitution Article VIII, section 13 states:

All surface and subsurface waters reserved to the people for common use, except mineral and medicinal waters, are subject to appropriation. Priority of appropriation shall give prior right. Except for public water supply, an appropriation of water shall be limited to stated purposes and subject to preferences among beneficial uses, concurrent or otherwise, as prescribed by law, and to the general reservation of fish and wildlife.

Alaska Constitution Article VIII, section 14 states:

Free access to the navigable or public waters of the State, as defined by the legislature, shall not be denied any citizen of the United States or resident of the State, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes.

Alaska Constitution Article VIII, section 15 provides, in pertinent part:

No exclusive right of special privilege of fishery shall be created or authorized in the natural waters of the State...

Alaska Statute 38.05.965(13) defined navigable waters:

“navigable water” means any water of the state forming a river, stream, lake, pond, slough, creek, bay, sound, estuary, inlet, strait, passage, canal, sea or ocean, or any other body of water or waterway within the territorial limits of the state or subject to its jurisdiction, that is navigable in fact for any useful public purpose, including but not limited to water suitable for commercial navigation, floating of logs, landing and takeoff of aircraft, and public boating, trapping, hunting waterfowl and aquatic animals, fishing, or other public recreational purposes;

LEGISLATIVE INTENT

The Legislature further interpreted the constitutional protections for public use of the waters in an act relating to the navigable or public waters of the state, declaring in the preamble (85 SLA ch.82):

- (a) The people of the state have a constitutional right to free access to the navigable or public waters of the state.
- (b) Subject to the federal navigational servitude, the state has full power and control of all of the navigable or public waters of the state both meandered and unmeandered, and it holds and controls all navigable or public waters in trust for the use of the people of the state.
- (c) Ownership of land bordering navigable or public waters does not grant an exclusive right to the use of the water and any rights of title to the land below the ordinary high water mark are subject to the rights of the people of the state to use and have access to the water for recreational purposes or any other public purpose for which the water is used or capable of being used consistent with the public trust.
- (d) This Act may not be construed to affect or abridge valid existing rights or create any right or privilege of the public to cross or enter private land.

ALASKA STATUTES

38.05.126. Navigable and public water.

- (a) The people of the state have a constitutional right to free access to and use of the navigable or public water of the state.
- (b) The state has full power and control of all of the navigable or public water of the state, both meandered and unmeandered, and the state holds and controls all navigable or public water in trust for the use of the people of the state.
- (c) Ownership of land bordering navigable or public water does not grant an exclusive right to the use of the water and a right of title to the land below the ordinary high water mark is subject to the rights of the people of the state to use and have access to the water for recreational purposes or other public purposes for which the water is used or capable of being used consistent with the public trust.
- (d) This section may not be construed to affect or abridge valid existing rights or create a right or privilege of the public to cross or enter private land.

Sec. 38.05.127. Access to navigable or public water.

- (a) Before the sale, lease, grant, or other disposal of any interest in state land adjacent to a body of water or waterway, the commissioner shall,
 - (1) determine if the body of water or waterway is navigable water, public water, or neither;
 - (2) upon finding that the body of water or waterway is navigable or public water, provide for the specific easements or rights-of-way necessary to ensure free access to and along the body of water, unless the commissioner finds that regulating or limiting access is necessary for other beneficial uses or public purposes.
- (b) The department shall adopt regulations implementing this section.
- (c) Nothing in this section affects valid existing rights or limits in any way the constitutional right of the public to use and have free access to the navigable or public waters of the state.
- (d) Upon application by a municipality or an affected owner of land, the department may vacate, release, modify, or relocate an easement and right-of-way for public access to or along navigable or public waters reserved by the department in a patent issued under AS 29.65 or former AS 29.18, if the commissioner determines the action is consistent with the public interest.
- (e) The establishment of easements or rights-of-way for oil and gas and mineral leases under (a) of this section need not be made until the leases are ready to be developed.
- (f) Rights-of-way or easements to waterways established under (a)(2) of this section shall be established approximately once each mile unless the commissioner makes a written finding that regulating or limiting access is necessary for other beneficial uses or public purposes.
- (g) The commissioner may exchange land under AS 38.50 to create access to public water of the state.

Sec. 38.05.128. Obstructions to navigable water.

- (a) A person may not obstruct or interfere with the free passage or use by a person of any navigable water unless the obstruction or interference is
 - (1) authorized by a federal agency and a state agency;
 - (2) authorized under a federal or state law or permit;
 - (3) exempt under 33 U.S.C. 1344(f) (Clean Water Act);
 - (4) caused by the normal operation of freight barging that is otherwise consistent with law; or
 - (5) authorized by the commissioner after reasonable public notice.
- (b) An unauthorized obstruction or interference is a public nuisance and is subject to abatement. The cost of abatement shall be borne by the violator and is in addition to any penalty imposed by the court.
- (c) This section may not be construed to affect or abridge valid existing rights.
- (d) Free passage or use of any navigable water includes the right to use land below the ordinary high water mark to the extent reasonably necessary to use the navigable water consistent with the public trust.
- (e) Free passage or use of any navigable water includes the right to enter adjacent land above the ordinary high water mark as necessary to portage around obstacles or obstructions to travel on the water, provided
 - (1) entry is made without injury or damage to the land;
 - (2) entry is made in the least obtrusive manner possible;
 - (3) there is no reasonable alternative available to avoid the use of the adjacent land above the ordinary high water mark; and
 - (4) the navigable water is reentered immediately below the obstacle or obstruction at the nearest point where it is safe to do so.
- (f) A violation of (a) of this section is a class B misdemeanor.

Fact sheet:



Alaska Department of Natural Resources

Division of Mining, Land and Water • May 2009

GENERALLY ALLOWED USES ON STATE LAND

As provided in 11 AAC 96.020, the following **uses and activities are generally allowed on state land** managed by the **Division of Mining, Land and Water** (these uses and activities may be restricted in legislatively designated areas, or special management category or status as listed in 11 AAC 96.014¹). Uses listed as “Generally allowed” do not require a permit from the Division of Mining, Land and Water. Note that this list does not apply to state parks, nor to land owned or managed by other state agencies such as the University of Alaska, Alaska Mental Health Trust, Department of Transportation and Public Facilities, or the Alaska Railroad. **You may need other state, federal or borough permits for these uses or activities.** Permits can be required from the Army Corps of Engineers, Department of Environmental Conservation, the Environmental Protection Agency, Alaska Department of Fish and Game Habitat Division (ADF&G-Habitat). A Coastal Project Questionnaire may also be required by these agencies. Before beginning an activity on state land, the user should check to be sure it is generally allowed in that particular area.

TRAVEL ACROSS STATE LAND:

Hiking, backpacking, skiing, climbing, and other foot travel; bicycling; traveling by horse or dogsled or with pack animals.

Using a highway vehicle with a curb weight of up to 10,000 pounds, including a four-wheel-drive vehicle and a pickup truck, **or using a recreational-type vehicle** off-road or all-terrain vehicle with a curb weight of up to 1,500 pounds, including a snowmobile (or other tracked vehicle), motorcycle or ATV, on or off an established road easement, if use off the road easement does not cause or contribute to water quality degradation, alteration of drainage systems, significant rutting, ground disturbance, or thermal erosion. (Curb weight means the weight of a vehicle with a full tank of fuel and all fluids topped off, but with no one sitting inside or on the vehicle and no cargo loaded. Most highway rated sport utility vehicles are within the weight limit as are most small ATVs, including a basic Argo.) Use of larger off-road vehicles over 1,500 pounds curb weight, and the off-road travel of construction and mining equipment requires a permit from DNR. An authorization is required from the ADF&G-Habitat for any motorized travel in fish bearing streams.

Landing an aircraft (such as a single-engine airplane or a helicopter), or using watercraft (such as a boat, jet-ski, raft, or canoe), without damaging the land, including shoreland, tideland, and submerged land.

Driving livestock, including any number of reindeer or up to 100 horses, cattle, or other domesticated animals.

ACCESS IMPROVEMENTS ON STATE LAND:

Brushing or **cutting a trail** less than five feet wide using only hand-held tools such as a chainsaw (making a trail does not create a property right or interest in the trail).

Anchoring a mooring buoy in a lake, river, or marine waters, or placing a **float, dock, boat haulout, floating breakwater, or boathouse** in a lake, river, or in marine waters, for the personal, noncommercial use of the upland owner, if the use does not interfere with public access or another public use, and if the improvement is placed within the projected sidelines of the contiguous upland owner's parcel or otherwise has the consent of the affected upland owner. A float or dock means an open structure without walls or roof that is designed and used for access to and from the water rather than for storage, residential use, or other purposes. A boat haulout means either a rail system (at ground level or elevated with pilings) or a line attached from the uplands to an anchor or mooring buoy. A floating breakwater means a structure, such as a log bundle, designed to dissipate wave or swell action. A boathouse means a structure designed and used to protect a boat from the weather rather than for other storage, residential use or other purposes.

¹ These special use areas are listed in 11 AAC 96.014 and on the last page of this fact sheet. Maps of the areas are available online at: www.dnr.state.ak.us/mlw/sua/

REMOVING OR USING STATE RESOURCES:

Hunting, fishing, or trapping, or placement of a crab pot, shrimp pot, herring pound or fishwheel, that complies with applicable state and federal statutes and regulations on the taking of fish and game.

Harvesting a small number of **wild plants, mushrooms, berries, and other plant material** for personal, noncommercial use. The cutting of trees is not a generally allowed use except as it relates to brushing or cutting a trail as provided above. Commercial harvest of non-timber forest products requires a permit (11 AAC 96.035) and harvest practices must conform to the Alaska Non-Timber Forest Products Harvest Manual for Commercial Harvest on state-owned Lands. <http://dnr.alaska.gov/ag/NTFPRReports.htm>

Using dead and down wood for a cooking or warming fire, unless the department has closed the area to fires during the fire season.

Grazing no more than five domesticated animals.

Recreational gold panning; hard-rock mineral prospecting or mining using light portable field equipment, such as a hand-operated pick, shovel, pan, earth auger, or a backpack power drill or auger; or **suction dredging** using a suction dredge with a nozzle intake of six inches or less, powered by an engine of 18 horsepower or less, and pumping no more than 30,000 gallons of water per day. An authorization is required from ADF&G-Habitat prior to dredging in fish bearing streams.

OTHER IMPROVEMENTS AND STRUCTURES ON STATE LAND:

Setting up and using a camp for personal, noncommercial recreational purposes, or for any non-recreational purpose (such as a support camp during mineral exploration), for no more than 14 days at one site, using a tent platform or other temporary structure that can readily be dismantled and removed, or a floathouse that can readily be moved. Moving the entire camp at least two miles starts a new 14-day period. Cabins or other permanent improvements are not allowed, even if they are on skids or another non-permanent foundation. The camp must be removed immediately if the department determines that it interferes with public access or other public uses or interests.

Brushing or cutting a survey line less than five feet wide using only hand-held tools (such as a chainsaw), or **setting a survey marker** (setting a survey monument—a permanent, official marker—requires written survey instructions issued by the Division of Mining, Land and Water under 11 AAC 53).

Placing a residential **sewer outfall** into marine waters from a contiguous privately owned upland parcel, with the consent of the affected parcel owners, if the outfall is within the projected sidelines of the contiguous upland parcel and is buried to the extent possible or, where it crosses bedrock, is secured and covered with rocks to prevent damage. Any placement of a sewer outfall line must comply with state and federal statutes and regulations applicable to residential sewer outfalls.

Placing riprap or other suitable bank stabilization material to prevent erosion of a contiguous privately owned upland parcel if no more than one cubic yard of material per running foot is placed onto state shoreland and the project is otherwise within the scope of the U.S. Army Corps of Engineers nationwide permit on bank stabilization.

MISCELLANEOUS USES OF STATE LAND:

An event or assembly of 50 people or less, including events sponsored by non-profit organizations or a commercial event.

Entry for **commercial recreation** purposes **on a day-use basis** with no overnight camps or unoccupied facilities that remain overnight, as long as the use has been registered as required by 11 AAC 96.018.

Recreational or other use not listed above may occur on state land as long as that use

- * is not a commercial recreational camp or facility, (whether occupied or unoccupied) that remains overnight;
- * does not involve explosives or explosive devices (except firearms);

- * is not prospecting or mining using hydraulic equipment methods (i.e. the use of pumped or flowing water to remove overburden or move gravels);
- * does not include drilling in excess of 300 feet deep (including exploratory drilling or stratigraphic test wells on state land not under oil or gas lease);
- * is not for geophysical exploration for minerals subject to lease or an oil and gas exploration license or for seismic surveys involving the use of explosives;
- * does not cause or contribute to significant disturbance of vegetation, drainage, or soil stability;
- * does not interfere with public access or other public uses or interests; and
- * does not continue for more than 14 consecutive days at any site. Moving the use to another site at least two miles away starts a new 14-day period.
- * does not include exploration for coal (a notice of intent to conduct exploration for coal must be filed with the DNR)

Check for special conditions and exceptions!

All activities on state land must be conducted in a responsible manner that will minimize or prevent disturbance to land and water resources, and must comply with all applicable federal, state, and local laws and regulations. **By acting under the authority of this list, the user agrees to the conditions set out in 11 AAC 96.025** (a copy of these conditions are attached to this fact sheet). A person who violates these conditions is subject to any action available to the department for enforcement and remedies, including civil action for forcible entry and detainer, ejectment, trespass, damages, and associated costs, or arrest and prosecution for criminal trespass in the second degree. The department may seek damages available under a civil action, including restoration damages, compensatory damages, and treble damages under AS 09.45.730 or AS 09.45.735 for violations involving injuring or removing trees or shrubs, gathering technical data, or taking mineral resources. (11 AAC 96.145)

Remember that this list does not apply to state parks, University of Alaska lands, or Alaska Mental Health Trust lands. In addition, some other areas managed by the Division of Mining, Land and Water are not subject to the full list of generally allowed uses. Exceptions may occur because of special conditions in a state land use plan or management plan for example, a management plan may reduce the number of days that people can camp at a specific site), or by a “special use land” designation (for instance, a special use land designation for the North Slope requires a permit for off-road vehicle use). Special Use Areas are listed in 11 AAC 96.014; more information is available on the department’s website at <http://dnr.alaska.gov/mlw/sua/>. GAU’s have also been modified for the Knik River Public Use Area.

Also, be aware that this list does not exempt users from the permit requirements of other state, federal, or local agencies. For example, the ADF&G - Habitat may require a permit for a stream crossing or if the use will take place in a state game refuge.

Finally, this list does not authorize a use if another person has already acquired an exclusive property right for that use. For instance, it does not give people permission to graze livestock on someone else’s state grazing lease, to build a trail on a private right-of-way that the Division of Mining, Land and Water has granted to another person, or to pan for gold on somebody else’s state mining location.

Department staff can help users determine the land status of state-owned land and whether it is subject to any special exceptions or to private property rights.

For additional information, contact the Department of Natural Resources:

PUBLIC INFORMATION CENTER 550 W. 7 th Avenue, Suite 1260 Anchorage, AK 99501-3557 (907) 269-8400 TDD: (907) 269-8411	DIVISION OF MINING, LAND & WATER PUBLIC INFORMATION OFFICE 400 Willoughby Ave., Suite 400 P.O. Box 111020 Juneau, AK 99801-1021 (907) 465-3400 TDD: (907) 465-3888	PUBLIC INFORMATION CENTER 3700 Airport Way Fairbanks, AK 99709-4699 (907) 451-2705 TDD: (907) 451-2770
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CONDITIONS FOR GENERALLY ALLOWED USES
(11 AAC 96.025²)

A generally allowed use listed in 11 AAC 96.020 is subject to the following conditions:

- (1) activities employing wheeled or tracked vehicles must be conducted in a manner that minimizes surface damage;
- (2) vehicles must use existing roads and trails whenever possible;
- (3) activities must be conducted in a manner that minimizes
 - (A) disturbance of vegetation, soil stability, or drainage systems;
 - (B) changing the character of, polluting, or introducing silt and sediment into streams, lakes, ponds, water holes, seeps, and marshes; and
 - (C) disturbance of fish and wildlife resources;
- (4) cuts, fills, and other activities causing a disturbance listed in (3)(A)–(C) must be repaired immediately, and corrective action must be undertaken as may be required by the department;
- (5) trails and campsites must be kept clean; garbage and foreign debris must be removed; combustibles may be burned on site unless the department has closed the area to fires during the fire season;
- (6) survey monuments, witness corners, reference monuments, mining location posts, homestead entry corner posts, and bearing trees must be protected against destruction, obliteration, and damage; any damaged or obliterated markers must be reestablished as required by the department under AS 34.65.020 and AS 34.65.040;
- (7) every reasonable effort must be made to prevent, control, and suppress any fire in the operating area; uncontrolled fires must be immediately reported;
- (8) holes, pits, and excavations must be repaired as soon as possible; holes, pits, and excavations necessary to verify discovery on prospecting sites, mining claims, or mining leasehold locations may be left open but must be maintained in a manner that protects public safety;
- (9) on lands subject to a mineral or land estate property interest, entry by a person other than the holder of a property interest, or the holder's authorized representative, must be made in a manner that prevents unnecessary or unreasonable interference with the rights of the holder of the property interest.

List of Special Use Land Designations Excluded from Generally Allowed Uses

- | | |
|--|---|
| • Alyeska Ski Resort | • Lower Goodnews River |
| • Baranof Lake Trail | • Lower Talarik Creek |
| • Caribou Hills | • Marmot Island Special Use Area |
| • Exit Glacier Road | • Nenana River Gorge and McKinley Village Subd. |
| • Glacier/Winner Creek | • North Slope Area |
| • Hatcher Pass Special Use Area | • Northern Southeast Area, Tidelands |
| • Haines State Forest | • Nushagak |
| • Indian Cove | • Poker Flat North |
| • Kamishak Special Use Area | • Poker Flat South |
| • Kenai Fjords Coastline | • Resurrection Bay |
| • Kenai River Special Management Area Proposed Additions | • Tangle Lakes Archaeological District |
| • Lake Clark Coastline | • Thompson Pass |
| | • Togiak National Wildlife Refuge |
| | • Knik River Special Use Area |

² Register 164, January 2003

DEC Recommendations for Land Use Planning

March 2008

Nonpoint Source Water Pollution Prevention Measures

- Protect areas that provide important water quality benefits and/or are particularly susceptible to erosion and sediment loss.
- Preserve areas that provide important water quality benefits and/or are necessary to maintain riparian vegetation and aquatic biota.
- Site development projects, including roads, highways, trails and bridges, should be designed to protect the natural integrity of waterbodies, riparian vegetation, and natural drainage systems.
- Limit increases of impervious areas, except where necessary.
- Limit disturbance activities such as clearing and grading, and cut and fill to reduce erosion and sediment loss
- Limit disturbance of natural drainage features and vegetation
- Provide waste management facilities for human and solid wastes at high use areas.

Management Measure for Erosion and Sediment Control:

- Retain and protect natural vegetation particularly at the top and bottom of a slope along the contour, to slow runoff velocity, filter sediment, and reduce the volume of runoff on slopes.
- Reduce soil erosion and to the extent practicable, retain sediment onsite during and after construction
- During development the smallest practical area should be exposed at any one time. When land is exposed during development, the exposure should be kept to the shortest practical period of time.
- Prior to land disturbance, prepare and implement an approved erosion and sediment control plan or similar administrative document that contains erosion and sediment control provisions.
- During the active mining process reduce erosion and runoff from disturbed upland areas by replacing groundcover as soon as practical in the development.
- Sediments and other pollutants, including but not limited to oil, grease, nutrients, bacteria and heavy metals generated by development activity, should be removed from runoff waters by appropriate water quality control measures before discharge into streams or lakes. Examples of control measures include sediment basins, silt traps, debris basins, oil/water separators, vegetated swales, and infiltration devices. The development plan should be fitted to the topography and soil conditions so as to create the least erosion potential.
- Provisions should be made to effectively accommodate the increased runoff and pollutant loads caused by changed soil and surface conditions during and after development. Such provisions should include both stormwater and water quality control measures

Rationale: The establishment and maintenance of vegetation are the most important factors in minimizing erosion during development. Erosion potential is affected by several factors: precipitation, soils, and vegetation. Rainfall characteristics, such as frequency, intensity, and duration directly influence the amount of runoff that is generated. As the frequency of rainfall increases, water has less chance to drain through the soil between storms. The soil will remain saturated for longer periods of time and stormwater runoff volume may be potentially greater. Therefore, where rainfall events are frequent, intense, or lengthy, erosion risks are high.

Effective Stormwater Site Plan Management Measures

- Minimize Clearing and Grading
- Protect Waterways
- Phase Construction to Limit Soil Exposure
- Immediately Stabilize Exposed Soils
- Protect Steep Slopes and Cuts
- Install Perimeter Controls to Filter Sediments
- Employ Advanced Sediment Settling Controls
- Certify and Train Contractors on Stormwater Site Plan Implementation
- Control Waste at the Construction Site
- Inspect and Maintain Best Management Practices

Rationale: Stormwater runoff from lands modified by human activities can harm surface water and, in turn, cause or contribute to exceedances of water quality standards by changing natural hydrologic patterns, accelerating natural stream flows, destroying aquatic habitat, and elevating pollutant concentrations and loadings. Runoff may contain high levels of contaminants, such as sediment, suspended solids, nutrients (phosphorus and nitrogen), heavy metals, pathogens, toxins, oxygen-demanding substances (organic material), and floatables. After a rain, stormwater runoff carries these pollutants into nearby streams, rivers, lakes, estuaries, wetlands, and oceans. Individually and combined, these pollutants impair water quality, threatening designated beneficial uses and causing habitat alteration and destruction.